Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car *and* Local Lodge 1368 of District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO.
Cases 5-CA-11389 and 5-CA-11980

March 16, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On October 6, 1980, Administrative Law Judge Thomas A. Ricci issued his Decision in this consolidated proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief; and Respondent filed cross-exceptions and a supporting brief and a brief in answer to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

1. As more fully described in the Decision of the Administrative Law Judge, the record evidence shows that a move toward union representation by International Association of Machinists and Aerospace Workers (IAM) began in August 1979, when employees Marvel and Perdue contacted the business representative for District 186 and, on August 11 or 12, began securing employee signatures on union authorization cards. By August 17 some eight employees, both rental and service agents, had signed cards. The day before, August 16, the Union had written a letter to Respondent claiming representation status in a unit of counter and service employees, offering to submit proof of majority status, and requesting that Respondent recognize and bargain with the Union. The Union's letter also stated that this was a continuing request for recognition. Respondent received the letter on August 18, and, by letter of August 20, refused the Union's request. On August 23 the Union filed a petition with the Board, requesting an election. In the meantime, Respondent had begun, on August 20, numerous operational changes which the General Counsel alleges were in retaliation for such union activity.

At the times material herein, there were approximately six rental agents employed by Respondent at the Roanoke airport, dealing with customers and renting cars; approximately eight service agents servicing the cars and trucks, and working between the Roanoke airport and Respondent's nearby office; two employees in the office renting trucks and performing office functions; and two employees at White Sulphur Springs, West Virginia.

2. The Administrative Law Judge found, and we agree, for the reasons stated by him, that Respondent, by its systematic interrogation of its employees concerning their own and other employees' union activity; by threatening employees with loss of jobs; by discharging employees Hale and McBride; by threatening to close its plant; by demanding that employees withdraw their union authorization cards; by offering monetary rewards to its employees to induce them to inform on the identity and union activities of fellow employees; and by creating the impression that it was engaged in surveillance of employees' union activity, engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

The Administrative Law Judge also found that Respondent retaliated against the employees as a total group in two monetary respects: failing to distribute "Avis inspection" prize money contrary to its past practice; and failing to pay employees the promised "bonus" money for increased insurance sales, contrary to its pledge. We agree also with these findings.

3. The General Counsel excepts, however, to the failure of the Administrative Law Judge to provide a remedial order concerning these two monetary violations of Section 8(a)(3); to the failure of the Administrative Law Judge to find 8(a)(3) violations in the discharge of employee Perdue, the transfers of Perdue and Marvel, and the reductions in hours of Perdue, McBride, and Marvel; to the failure to find June Hannabas was a supervisor during the crucial time period herein; and to the failure to find that the Union represented a majority of the unit employees on August 18. The General Counsel further excepts to the failure of the Administrative Law Judge to find that respondent violated Section 8(a)(5), and to include a *Gissel* bargaining order[1] as a part of his Decision. We find merit in these exceptions.

We start with Respondent's knowledge of union activity, centered principally among its rental clerks at the Roanoke airport, and the conclusion of the Administrative Law Judge that it was Respondent's intention to retaliate against these union supporters as a group. The conversations between employees and Respondent officials, including Hannabas (whom we find to be a supervisor, *infra*), indicate clearly that Respondent was well aware of

[1] *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

the union activities among its employees and of who was involved in such activities. As Fannin stated, Respondent "would do anything to keep the Union out of this Company," including, as the record shows, interrogating employees, discharging employees and hiring others, threatening employees, withholding prize money and earned "insurance sale bonuses," and threatening to close its business.

With these facts in mind, the Administrative Law Judge did not accept Respondent's reasoning for the discharges of Hale and McBride, its transfer of office employee Blair to the airport counter, and its alleged financial difficulty. Similarly, we cannot accept Respondent's argument concerning Perdue's discharge, the transfers of Perdue and Marvel, and the reductions in hours of Perdue, McBride, and Marvel. We note, initially, that Marvel and Perdue were the two employees who contacted the Union, as well as those principally involved in the securing of authorization cards, all of which was known to Respondent. During the week following the Union's demand for recognition, Hale and McBride were terminated, Marvel was transferred to the night shift, and Perdue was transferred to the night shift and then had her hours reduced. Respondent then withheld the monetary rewards and bonuses from the employees, and, some time later, terminated Perdue and reduced Marvel's hours from 40 to 14.

In defense of these actions, Respondent contends that it needed to accumulate more cash, and that its moves were strictly in accordance with seniority. The Administrative Law Judge found, and the record shows, that, at the time of these personnel actions, Respondent had an increase in revenue in its car rental business; granted raises to various employees; attempted to purchase an additional car franchise; and hired additional service agents at higher rates of pay than those paid the old service agents. Further, as to Respondent's argument regarding seniority, the record shows that there were several service agents who had less seniority than the rental agents who were terminated or transferred. Nor is there any showing that the terminated and transferred rental agents were incapable of performing service agent jobs. Indeed, at White Sulphur Springs, the record shows that one employee was performing both car rental and service responsibilities. In view of these facts, we cannot ignore Fannin's statement that Respondent "would do anything to keep the Union out," and the totality of its conduct in opposition to the Union.

Particularly probative is Respondent's view that Perdue and Marvel were considered union instigators. When we consider this in the context of Respondent's other unlawful antiunion conduct, we are impelled to conclude that the changes in hours for Perdue and Marvel, the reduction in hours for Perdue, Marvel, and McBride, and finally, in Perdue's case, discharge, constituted violations of Section 8(a)(3) and (1) of the Act.

Although the Administrative Law Judge found that Respondent further retaliated against the employees as a total group in two monetary respects, he failed to issue an appropriate remedy. Thus, Respondent refused to distribute a $500 "Avis inspection" prize and withheld bonus money, or commissions, from those employees who increased their insurance sales, contrary to its pledge to the employees. We agree with the Administrative Law Judge that Respondent violated Section 8(a)(3) by withholding these moneys and we shall order an appropriate remedy.

4. The Union would limit the appropriate unit to rental agents working at the Roanoke airport counter, and service agents at the airport and at Respondent's office. Respondent would include its office employees; employee Hannabas, who Respondent contends is no longer a supervisor; the accountant Givens; and employees working at White Sulphur Springs. The General Counsel would exclude Hannabas as a supervisor during the critical time period herein, exclude Givens as a casual employee, and exclude the employees at White Sulphur Springs on the grounds that they lack a community of interest with unit employees. We agree with the General Counsel.

As to employee Hannabas the General Counsel excepts to the failure to find her to be a supervisor. The Administrative Law Judge found that this employee was not a supervisor during the times relevant herein, and therefore was a part of the appropriate unit for purposes of determining majority status. We disagree. Uncontested testimony shows that Hannabas had been working for Respondent since 1972; first as a rental agent at the airport counter, later at Respondent's office, and finally returning to the airport facility. Prior to Hannabas' transfer to the office, she had served as a supervisor at the airport counter. During those years she had been a supervisor, she wore a badge which labeled her as such, and performed supervisory duties. Upon her transfer to the office she continued to handle customer complaints and personnel disputes, as well as decide which customers received "discount" rates. Also, her replacement was told that Hannabas would be her supervisor. Her employment benefits continued to be different, and she continued to grant time off. Accordingly, we find that Hannabas continued to exercise supervi-

sory authority while working in the office.[2] She was not transferred back to the counter until August 22, and therefore was a supervisor on the critical date. Accordingly, we shall exclude her from the unit.[3]

With respect to Givens, the record shows that she worked irregular hours auditing Respondent's books, usually at night, did not interchange with other employees, and had little, if any, contact with them. Accordingly, we shall exclude her from the unit as a casual employee lacking a community of interest with unit employees.[4]

The record also shows little interchange between those employees working in White Sulphur Springs and those in Roanoke, some 85 miles away. Working conditions are dissimilar; and one employee is a supervisor and one works as a dual rental-service agent. We find that there is no community of interest among the employees at the two locations and, accordingly, will exclude those employees at White Sulphur Springs.[5]

We find, therefore, the appropriate unit to consist of the rental agents, service agents, and office employees employed at Respondent's Roanoke facility on August 18, the date on which Respondent received the Union's demand for recognition. On this date, there were 13 employees in the appropriate unit, excluding Hannabas, Givens, and the White Sulphur Springs employees. As of August 18, seven of Respondent's employees had signed union cards, authorizing the Union to represent them for collective-bargaining purposes, and the Union had written Respondent informing it of this fact. During the time material herein, therefore, the Union represented 7 of 13 employees, a majority of employees in the unit found appropriate.[6]

In view of our findings above, we conclude that the Union represented a majority of Respondent's employees as of August 18, 1980.[7]

The record shows that Respondent embarked on its course of unlawful conduct on August 20, shortly after it received the Union's letter. Subsequently, it discharged employees; reduced their working hours; transferred them to less desirable shifts; threatened them with loss of jobs; demanded that they get their union authorization cards back; threatened to close its operations; withheld promised bonus money and prize money; and interrogated them repeatedly about their union sympathies and those of their fellow workers. With respect to the contention of the General Counsel that the actions of Respondent justify the issuance of a remedial bargaining order within *N.L.R.B.* v. *Gissel Packing Co., Inc.*,[8] the Board has considered, *inter alia*, the types, repetition, and effects of the unfair labor practices involved.

We note initially that Respondent's actions were directed exclusively against the relatively small unit of 13 employees. Within 1 week of the date of the Union's demand for recognition, Respondent, within this group, had terminated employees Hale and McBride; transferred Perdue and Marvel to the night shift; and reduced the working hours of Perdue and McBride. Three months later, Respondent discharged Perdue and reduced Marvel's hours. The Board has held that discriminatory discharges because of union activity are an extremely effective form of curtailing union activity, which involve the most basic rights of employees under the Act.[9] Such terminations can only give a lasting message to the employees that loss of their jobs is the price to be paid for the exercise of their Section 7 rights. The impact is especially severe when the unit is small and the discrimination is limited to the well-known activists, as here.

Additionally, Respondent threatened Craft and Hale with closure of the Company and interrogated Hale, Craft, Blair, and Moore regarding their union sympathies, and those of their fellow employees. Fannin also stated to service agent Neal, after asking if he had gotten his union authorization card back, "Well, we are not going to have that kind of stuff around here." Similarly, in a conversation with Craft, Ottaway, and subsequently Fannin, stated to her, "You don't know how serious we are about keeping the Union out of this company." The Board and courts have held a plant-closure threat is one of "the most potent weapons of em-

[2] *Little Rock Crate & Basket Co.*, 227 NLRB 1406 (1977); *ITT Lighting Fixtures, Division of ITT Corporation*, 249 NLRB 441, 442 (1980).

[3] The General Counsel alleges that Hannabas engaged in numerous 8(a)(1) violations. However, the Administrative Law Judge did not pass on these allegations because of his finding that Hannabas was not a supervisor. We also consider it unnecessary to pass on the allegations regarding Hannabas because numerous violations of the Act have been found against Respondent and its agents and supervisor, and any additional violations would not affect our remedy and Order.

[4] *Self Reliance Ukrainian American Cooperative Association, Inc., d/b/a Certified Foods*, 188 NLRB 638 (1971).

[5] *Clover Fork Medical Services, Inc.*, 200 NLRB 291, 292 (1972).

[6] In so finding, we place no reliance on, nor do we count, the authorization card signed by employee Hale, since the evidence establishes that the card was not signed until after August 19.

[7] Respondent contends that Local Lodge 1368 affiliated with District Lodge 186 of the International Association of Machinists was not authorized to be the bargaining representative of any of Respondent's employees, inasmuch as the demand for recognition was based on authorization cards designating the International as collective-bargaining representative. We find this contention to be without merit. The Board has long held that authorization cards are not invalid merely because the International, rather than the subsidiary which seeks recognition, is named as bargaining representative on the card. *Case, Inc.*, 237 NLRB 798 (1978).

[8] 395 U.S. 575, 614 (1969).

[9] *Drug Package Company, Inc.*, 228 NLRB 108 (1977); *The Kroger Company*, 228 NLRB 149 (1977).

ployer interference with the rights of employees to organize."[10]

The record is also clear that, in addition to the foregoing unfair labor practices, Respondent created the impression of surveillance, abandoned its past practice of sharing the Avis "contest prize" money with the employees, and did not grant the insurance sales commissions that it had promised those employees who increased insurance sales.

What distinguishes this case is the timing, type, extent, and constant repetition of the Respondent's violations. Discharges, threats of discharge, threats to close the Company down, frequent solicitations to surveil upon fellow employees can only convey to the employees Respondent's implacable and unalterable opposition to the rights of its employees to unionize under Section 7 of the Act.

A careful balancing of all the considerations herein indicates that our traditional remedies would not be effective in dissipating the coercive effects of the unfair labor practices here involved; that an uncoerced employee sentiment could not now be obtained through the election process. Thus, this case comes within the principles set forth by the Supreme Court in its *Gissel* decision, *supra.*

Based on the foregoing, and the entire record in this case, we find that by refusing the bargaining request of the Union, which represented a majority of its employees in an appropriate unit, and thereafter engaging in the flagrant unfair labor practices described above, Respondent has violated Section 8(a)(5) and (1) of the Act. We shall date the bargaining obligation as of August 20, 1979, the date Respondent refused the Union's demand for recognition and embarked on its course of unlawful conduct.[11]

5. Inasmuch as we have found merit in many of the exceptions of the General Counsel, including the failure of the Administrative Law Judge to find a violation of Section 8(a)(5) of the Act, the following Order[12] and notice are substituted for those of the Administrative Law Judge. The Conclusions of Law and Remedy have also been changed to reflect the disposition of the various issues in this case.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. An appropriate unit of Respondent's employees for purposes of collective bargaining is a unit of all rental agents, service agents, and office employees employed at Respondent's Roanoke, Virginia, airport facility and service and office areas excluding all other employees, guards and supervisors as defined in the Act.

4. Since August 18, 1979, Local Lodge 1368 of District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO, has been and is the exclusive representative of all employees in the aforesaid bargaining unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act and, by refusing to bargain with the Union since on and after August 20, 1979, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By discharging Loretta Hale, Sherry McBride, and Cynthia Perdue because of their union activities, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

6. By reducing the working hours of Sherry McBride, Wanda Marvel, and Cynthia Perdue because of their union activities, and by transferring Wanda Marvel and Cynthia Perdue to the night shift because of their union activities, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

7. By withholding prize money and bonuses from the employees, because of their union activities, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

8. By the following conduct, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act:

(a) By coercively interrogating its employees about their and other employees' union activities and sympathies.

(b) By offering monetary rewards to its employees as inducements for them to inform Respondent about the identity and union activities of other prounion employees.

(c) By threatening to discharge employees in retaliation for their union activities.

(d) By threatening to discontinue its business because of such union activities by its employees.

(e) By creating the impression that it was engaged in the surveillance of the union activities of its employees.

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[10] *Chemvet Laboratories, Inc. v. N.L.R.B.*, 497 F.2d 445, 448 (8th Cir. 1974).

[11] *Trading Port, Inc.*, 219 NLRB 298 (1975).

[12] In view of the egregious nature of Respondent's conduct, we are of the opinion that a broad order herein is warranted. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, we shall order that it offer Loretta Hale, Sherry McBride, and Cynthia Perdue reinstatement and make them whole for any loss of earnings. Respondent is also ordered to cease and desist from committing the types of unfair labor practices it has been engaged in; to make those employees discriminated against regarding the prize money and inspection money whole for the discrimination against them; to bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement; and to stop violating the statute in any other manner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car, Roanoke, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their or other employees' union membership, affiliation, views, sympathies, activities, or other protected concerted activities.

(b) Creating the impression of surveillance of its employees' union or other protected concerted activities under the Act.

(c) Threatening the cancellation or diminution of any existing job-related economic benefit or working condition privilege, or threatening adverse alteration of job status, or threatening closure or discontinuance of its business or threatening any other form of reprisal because of the union activities of its employees.

(d) Discharging or altering the job status of employees because of their union activities or other exercise of their rights under the National Labor Relations Act.

(e) Refusing to recognize and bargain with Local Lodge 1368 of District Lodge 186, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of its employees in the following appropriate unit:

> All rental agents, service agents, and office employees employed at Respondent's Roanoke, Virginia, airport facility and service and office areas excluding all other employees, guards and supervisors as defined in the Act.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Recognize, effective from August 20, 1980, and, upon request, bargain collectively with Local Lodge 1368 of District Lodge 186, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of all employees in the appropriate unit described above, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Loretta Hale, Sherry McBride, and Cynthia Perdue immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(c) Make Loretta Hale, Sherry McBride, Cynthia Perdue, and Wanda Marvel whole for any loss of pay or any benefits they may have suffered by reason of the Respondent's discrimination against them. Backpay is to be computed as described in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[13]

(d) Make whole, with interest, those employees who suffered losses in the discriminatory distribution of the bonus insurance money and the inspection prize money.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its place of business in Roanoke, Virginia, copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided

[13] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1966). Member Jenkins would compute interest in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by the Regional Director for Region 5, after being duly signed by its representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discourage membership in Local Lodge 1368 of District Lodge 186 of the International Association of Machinists and Aerospace workers, AFL-CIO, or in any other labor organization of our employees, by discharging any of our employees because of their membership in, or activities on behalf of, the above-named or any other labor organization.

WE WILL NOT coercively interrogate our employees about their union activities.

WE WILL NOT interrogate employees about the union activities of their fellow workers.

WE WILL NOT threaten to discharge employees in retaliation for their union activities.

WE WILL NOT threaten to discontinue our entire business because of the union activities of our employees.

WE WILL NOT create the impression that we are surveilling the union activities of our employees.

WE WILL NOT demand that our employees get their union authorization cards back in order to keep their jobs.

WE WILL NOT deny to our employees their share of the insurance bonus money and the inspection prize contest money, and will pay them the amount we have unlawfully withheld from them, with interest.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization; to join Local Lodge 1368 of District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities.

WE WILL offer Loretta Hale, Sherry McBride, and Cynthia Perdue immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make whole Loretta Hale, Sherry McBride, Cynthia Perdue, and Wanda Marvel for any loss of pay they may have suffered as a result of the discrimination against them, with interest.

WE WILL recognize effective from August 20, 1980, and, upon request, bargain collectively and in good faith with Local Lodge 1368 of District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of all the employees in the bargaining unit described below, and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

All rental agents, service and office employees employed by the Employer at its Roanoke, Virginia, airport facility and service and office areas adjacent thereto, excluding all other employees, guards and supervisors as defined in the Act.

CHECKER CAB COMPANY OF VIRGINIA, INC., D/B/A AVIS RENT-A-CAR

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrtive Law Judge: A hearing in this proceeding was held at Roanoke, Virginia, on May 27, 28, and 29, 1980, on separate complaints by the General Counsel against Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car, herein called the Respondent or the Company. The first complaint (Case 5-CA-11389) issued on October 15, 1979, upon a charge filed on October 1, 1979, by Local Lodge 1368 of District Lodge 186 of the International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union. The second complaint (Case 5-CA-

11980) issued on April 10, 1980, upon a charge filed by the same labor organization on February 29, 1980. The principal issues presented are whether the Respondent violated Section 8(a)(3) of the National Labor Relations Act, as amended, by discriminating against a number of employees in the course of their employment, and Section 8(a)(5) by unlawfully refusing to bargain with the Union. Briefs were filed by the General Counsel and the Respondent.

Upon the entire record, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car, a Virginia corporation, is engaged in the rental and sale of automobiles and trucks in Roanoke, Virginia, and in White Sulphur Springs, West Virginia. During the 12-month period preceding issuance of the first complaint, a representative period, it received gross revenues in excess of $50,000, and purchased and received, in interstate commerce, products valued in excess of $50,000. I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *A Picture of the Case*

Like other Avis auto rental operations, this Company too is in the business of renting passenger cars and trucks to the public. Its employees, classified in three categories—rental agents, service agents, and office personnel—work in three locations, all either in the Roanoke, Virginia, area or in White Sulphur Springs, West Virginia. The "office" is a separate small structure with a vehicle-serving area, about a mile away from the Roanoke airport. The rental agents deal with customers, arranging the rental agreements and related documents; the service agents take care of the vehicles or trucks—checking the machinery, changing oil, adding water, washing, etc.; and the office girls do the usual bookkeeping and recording. At the time of the events, in August and September 1979, there were two rental agents stationed at White Sulphur Springs, two office girls in the office, about six or seven rental agents in the airport, and perhaps eight service agents who worked both at the airport and near the office.

In mid-August a move towards representation by the IAM began among the employees; two of them first talked about it in their homes on or about August 5, contact with a business agent of the IAM was first made on August 7, and some of the girls started signing authorization cards in favor of the Union on August 11 or 12. By August 17 eight employees, both rental and service agents, had signed cards, and on August 16 the Union wrote a letter to the Respondent, claiming representation status and demanding recognition. The Company received the letter on August 18, and by letter dated August 20 refused recognition and suggested a Board election instead. On August 23 the Union filed a petition with the Board, requesting an election (Case 5-RC-10950).

Meanwhile, on August 20, and again on or about August 24, the Respondent made certain changes of personnel among the employees involved—transfer of employees to and from the office, change of shift assignments from day to evening, reduction of hours in some cases, and even discharge of two agents. In consequence of all this the Union filed an unfair labor practice charge on August 31, and from that day on all action under the representation election petition was discontinued. With further changes in personnel made by the Company later, the Union filed a second charge on February 29, 1980.

The Regional Director issued a separate complaint on each of the two charges—the first in October and the second in April 1980; each sets out in detail lists of unfair labor practices. On May 13, 2 weeks before the start of the scheduled hearing, the General Counsel issued a written amendment to each of the complaints, adding further allegations of illegal conduct. The Respondent's separate answers to each of these formalized complaints are best described as complete denial of each and every illegal act alleged.

With the complaint faulting virtually every personnel action taken by the Respondent after it learned of the union activity, it is difficult to evaluate each separate act of "discrimination" alleged and test its legality as an unfair labor practice in itself. The overall picture is tied into one bundle, as it were, with every detailed component put together and said to support each and every other part. As the General Counsel's brief shows, the basic idea of the complaint is that, because the Respondent was in fact opposed to the Union, and because its agents in fact did commit a number of violations of Section 8(a)(1)—interrogations and threats—it follows that any changes in operations made after the start of the union movement must have been illegally motivated.

Whether or not certain specific allegations are or are not supported by definitive proof can be seen clearly. As to most, however, there is a blurring of ideas—sometimes a reasoning by presumption. Indeed, the General Counsel candidly admits there is a paucity of "direct" evidence of unlawful discrimination. I think it best, therefore, to set the major questions in focus, to consider a few major questions that can be evaluated in isolation, and then to look at the rest of the case.

1. What is the scope of the appropriate bargaining unit? The Union says it must be limited to the employees at the Roanoke airport, including both rental and service agents, plus those service agents who work at, or adjacent to, the office a mile away. In disagreement, the Company contends that the office employees, as well as the two agents working at the White Sulphur Springs location, must also be included. This question is very material, if only because the no less important questions of majority status depend on the answer.

2. When exactly was the critical moment of demand and refusal, and was the Union at such determinative time authorized to bargain by a majority of the employees? This question of majority includes subordinate issues of inclusion or exclusion of particular employees for one reason or another.

3. The last question, of course, in this refusal-to-bargain aspect of the case, is: Did the Respondent commit such pervasive unfair labor practices as to preclude any rational expectation that a fair election among the employees can possibly take place in the foreseeable future, so that now an affirmative order to bargain in remedy must issue? See *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

4. Three employees were discharged—Hale, McBride, and Perdue. Each is alleged to have suffered discrimination in violation of Section 8(a)(3) of the Act because of her activities in favor of the Union. As to each of these women there is presented the classic circumstantial evidence case. In the absence of direct evidence of illegal motivation, you look at all the related facts and decide whether the affirmative burden resting upon the General Counsel to prove the violations has been met. And, again as always, each party to the inference case points to those facts supportive of his own view of the case.

B. *Evidence and Issues*

The dispute over June Hannabas' asserted supervisory status comes first because the answer to that question bears a relationship to and sheds light upon other issues of the case. More important, there is much testimony by clearly rank-and-file employees putting very antiunion statements in her mouth, and some of the 8(a)(3) part of the case rests upon her statements. If, as the Respondent contends, she was not a supervisor at the time of the events, the basic support of some of the complaint is weakened, for, however vitriolic the attitude of a dissident where unionism is concerned, it cannot be charged to the employer.

Hannabas has been working for this Company—almost always as a rental agent—since 1972; none of all the other rental agents has been employed more than a year or two at most. Geoffrey Ottaway, the general manager and now individual owner of the Company, bought it in April 1979 from its prior owner. He had been its general manager 12 years by that time, and Hannabas had, up to that point, always worked at the airport counter. When Ottaway took over, he made a change and transferred her to the office, where she worked with another girl. Work continued at the airport with five or six other rental agents.

In early July Hannabas developed a disc problem in her back and was medically advised she had to stop doing office work. She asked to be sent back to the airport counter and Ottaway said he would oblige her as soon as he could arrange the change. In fact, on or about July 15 he held a meeting of all the rental agents and told them this was going to happen. On August 22 Hannabas was transferred back to the airport and has been working there since as a rental agent. The Respondent admits that before leaving the airport in April Hannabas had supervisory status, but it disputes the General Counsel's contention that she continued to exercise supervisory authority, even over the airport aides a mile away, while she was in the office and after returning.

I find, on the total record, that Hannabas was not a supervisor within the meaning of the Act either when in the office or after returning to the airport. There is much evidence, offered by the General Counsel, about how she functioned before April 1979, but it is all irrelevant to the present question. The suggestion, argued in the brief, that because Hannabas had certain authority then, it follows she must also have had it later, is of little persuasion. At the office she did bookkeeping and maintained the usual records of the rental operations, just like the girl who worked with her. After coming to the counter, she simply resumed the counter work exactly as she had done before and as the other girls were doing. On her first day back she wore her old suit badge with the word "supervisor" on it; in the office no uniforms are worn at all. Sometime later, the boss told her to take it off and she did.

Some witnesses said they were told, when Hannabas returned to the airport, that she would again be a supervisor. Other witnesses denied this. But neither a temporary label pinned on her nor purely conclusionary assertions by the prosecution witnesses can take the place of direct evidence about what Hannabas did and the precise extent or nature of her authority. A revealing fact, in the face of the repeated assertions by the General Counsel witnesses now, is that while the two complaints, issued in October 1979 and in February 1980, list General Manager Ottaway and Assistant Manager Omer Fannin as agents of the Company for whose contact the Respondent is accountable, it was not until May 13, 2 weeks before the start of the hearing, that Hannabas was inserted as a supervisor at all. It was an afterthought. Cynthia Perdue was discharged in November, and her dismissal is one of the major issues of this case. In contradiction with her testimony, in her two investigation affidavits—given in September and in March—she said, "My immediate supervisor is Omer Fannin." Another witness, Diane Craft, also testified her immediate supervisor was Hannabas. But her affidavit, dated March 16, says her "immediate supervisor" was Fannin.[1]

[1] The most nearly perfect violation of Sec. 8(a)(1)—if such it was by a supervisor—came on Saturday, August 25, 3 days after Hannabas had returned to the airport desk. There is testimony by some employees about management telling Perdue henceforth she could no longer go to the toilet just because she had to, she could only go during the allotted break period. That Manager Fannin said this to her I believe, for he said a number of things he should not have said. If the reason for imposing this restriction at that moment was in retaliation for the union activity going on, I suppose it must be found to have been an unfair labor practice. In any event, Kim Worley, who works for Budget Rent-A-Car in the Roanoke airport, testified that on that day, 3 days after Hannabas had returned there, she heard her say "that that [the new order not to go to the toilet on company time] was not for everyone but that was just for the union people because Geoff [Ottaway] and Omer [Fannin] were trying to make it harder on them . . . . She said she knew who the union people were and that Geoff and Omer knew who they were. And she named them: there was Wanda [Marvel] and Cindi [Perdue] and Diane [Craft] and Riley and Sherry [McBride]." Thus four of the people she named are the ones said to have suffered illegal discrimination at the hands of the Company. In her brief the General Counsel says those affidavits—the sworn statements by two women, Perdue and Craft, that Fannin was

Continued

While in the office, a mile away, of course, Hannabas could hardly be called the supervisor of airport employees. There is evidence that she occasionally used to pitch in there for an absent employee, but it appears uncontradicted that while there she did no more than the old rental agent work she used to do. And as to the only other office girl with her in the office, there is also no evidence of supervision in fact.

In sum, there is nothing to show—indeed, the contrary testimony stands unquestioned on the record—that Hannabas had any voice in, or recommended, changes in pay, hiring, discipline, or any other matter affecting the employees' status or benefits. Rather, there is direct evidence of what it is she used to do, and still does, which, in the opinion of the General Counsel, makes her a supervisor. The rental agents kept talking about "problems," how they had been told to take their problems to Hannabas, and how they did that. But all they specified, when asked to explain their use of the word, were two problems. Some customers who come to the counter enjoy special rates. Whenever the girl in attendance does not know, or is not sure, whether that man is entitled to the rebate, she asks Hannabas or, when Hannabas was at the office, she called her on the phone to inquire. It is not surprising if Hannabas, with so many years of greater experience, is better informed concerning customer arrangements. Computers are in regular use at the Company's locations. When something went wrong with the computer, again the girl turned to Hannabas for assistance, and she told her how better to operate it. By the winesses: "If we couldn't get information enter in the computer, we would call June. Any of the problems we couldn't handle at the counter we called June for." Again: "We have to do a car status on every car before we rent it . . . if the car is unavailable to rent, we could tell June about it and she clears the matter up down in the office . . . . Like she would clear the car out of the computer, put the right mileage in, you know, for the car at that time that is supposed to be rented out." By McBride: ". . . if you have an Avis card, we can automatically print them up before the customer arrives and when the customer arrived we couldn't get the contract machine to take the contract so I had to ask June about that because we were having trouble getting it in."

All this proves is that Hannabas, with so many years' experience at the work, was best informed as to the rules about the rental discounts and about how to handle the machines. Guidance in how to do the work by the senior to the novice is standard operation in many fields of employment. It does not prove supervisory status as the word is defined in the Act. Cf. *Vapor Corporation*, 242 NLRB 776 (1979). Hannabas' higher value as the truly skilled member of the staff also reasonably explains the greater largesse the Company extended to her. All the girls are hourly paid and punch a timeclock; Hannabas gets $200 a week and seldom punches the clock. She was paid for a full month of sick leave in 1978, a benefit the other employees do not enjoy. In return, she said, she does overtime without asking to be paid for it.

No matter how one looks at all this, it still shows nothing of substance of the question of wages, hire, transfer, suspend, layoff, or other conditions of employment. Two girls spoke of a single incident when the two of them got into a personal hassle—a "misunderstanding between them," as witness Marvel said. Craft, the other girl, said she telephoned Hannabas at the office about it as "Sherry and I were just joking . . . nothing major." Later Hannabas called back to ask "was everything okay," and Craft told her, "Yes."

Again, in her brief the General Counsel asks that if the evidence falls short of proving Hannabas to have been a supervisor within the meaning of the Act, for the least she should be deemed an agent of the Respondent. The evidence does show she was not well disposed towards the idea of a union, that her old friend Ottaway talked to her about it when the union activity came to his attention, and even that she did not hesitate to express her views to fellow employees. But no Board precedent has been cited for the proposition that because an employee is friendly with the boss, and thinks as he does about unions, it follows she speaks for him when she talks.

C. *Section 8(a)(3)*

As stated above, the Company received the Union's demand letter, with notice of majority authorization by the employees, on August 18. During the following week—August 20 to 24—it made a number of changes in work assignments. On August 20 it discharged Loretta Hale; on August 21 it reduced the hours of McBride, and switched Perdue from the day to the night shift. Three days after firing Hale, it transferred Connie Blair from the office to the airport, switched Marvel from day to night, reduced the hours of Perdue, and discharged McBride. Three months later, on November 27, the Respondent made further changes in the same group—the airport rental agents—reducing the hours of Marvel and discharging Perdue. Every one of these changes, according to the complaint, was motivated by an intent to curb the surfacing of union activity, deliberate discrimination in employment in violation of Section 8(a)(3).

Denying unlawful purpose in any of its actions, the Respondent advances essentially two affirmative defenses: (1) that the transfer of Hannabas to the airport desk made a reduction in force necessary, and (2) that financial reverses, or need, in part at least, explained all that it did.

During these events, but particularly in late August, Ottaway and Fannin committed unfair labor practices—that is, questioned employees about their activities, sought to induce them into reporting on the union activities of others, created the impression that it was surveying their activities, and even threatened to close the entire place. As to many of the precisely alleged acts of discrimination, these separate violations of Section 8(a)(1) are in a sense indirect proof that the actual changes in employee status were unlawfully motivated. The arguments both ways will be best appreciated if the three

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their "immediate supervisor"—are "meaningless," because "the issue is whether Hannabas was a supervisor when she worked in the office, not when she returned to the counter." If it is English I am reading, this is in agreement with the Respondent that from August 22 on Hannabas was not a supervisor. In that event, how do her stated feelings bind the Company?

major changes—outright discharge of three employees—be first considered in the light of those facts which bear directly on each of the separate discharges.

D. *The Discharge of Hale*

Hale was hired on July 7 and taken on as a part-timer; she worked only 4 days a week. She signed a union membership card on August 20. While at work that day at the airport, Fannin, the manager, picked her up in his car and drove her to the office a mile away, where he sat her down and had a talk with her. There is a conflict in testimony between him and her as to what was said during their conference. Hale also testified that Ottaway, the owner, came into the room and talked to her. Ottaway denied having seen her at all that day in the office. There is no dispute, however, as to the further facts that Fannin then had Hale driven back to the airport by one of the service agents, that she resumed her regular duties, that her scheduled hours that day were from 3:30 p.m. to midnight, and that she punched out—as shown by the card received in evidence—at exactly 9:24 p.m., and went home, never to work again for the Respondent.

Her testimony, about her conversation with Fannin, follows: the manager asked did she know "that the Union was trying to get into the Company" and she said no. Fannin went on: "He also asked me if I had signed a union card." Again she said no. "He went on to tell me that they would definitely not have the union; that they would go as far as selling their homes, going back to apartment living, they would put their children back in public schools, they would do all of this to keep the union out." Hale then asked him: ". . . are you putting my job on the line?" Fannin's answer was, still according to Hale, ". . . yes, absolutely." At this point, as Hale testified, Fannin called Ottaway into the office, and told him Hale knew nothing about the Union. The owner's comment was: ". . . we believe you, Hale . . . . You are an asset to the company . . . in the next few weeks I may ask you to do some crazy things . . . I may ask you to write myself or Omer a letter asking for a personal leave of absence." Hale said the owner did not explain this, but that she then asked would he guarantee her job back, to which he said, "Yes." Continuing with her testimony: "He also told me that I would receive pay while I was on this personal leave of absence and that would be between me and him." Ottaway's final statement was: "If the conversation was repeated it would be denied."

Hale continued that, after Fannin had a service driver drive her back to work, at "around 8 or 9 o'clock that night" Fannin came again to the airport and told her "he and Geoff had been talking some things over and doing some thinking and the only thing they could do right now was lay me off." When she asked how long the layoff would be, he told her he did not know, and apologized. With this Hale clocked out then and there.

Fannin, testifying after Hale, denied every word about the Union that came out of Hale's mouth. His story is that all he told her in the office was, "We had to let her go," that it all took no longer than 5 or 10 minutes, and that he said nothing else. He did add that he told the girl she could work to the end of her shift, because he always does that when discharging someone. Fannin then admitted going to the airport "anywhere between 7 and 9," as he usually does; his story is he told her then no more than he was sorry this had to happen. He denied telling her to leave then.

I credit Hale against both Fannin and Ottaway. This is a situation where the defense testimony carries its own death wound. The basic defense assertion is that somebody had to be let go at the airport counter to make room for the returning Hannabas from the office. Hale was the most junior of all the rental agents, she was a part-timer anyway, and therefore the obvious one to be selected. The defense is made to appear more convincing by the fact Hannabas had asked for a transfer, and the Company had agreed, before any union activity started. From this it follows, the Respondent argues, that Hale's discharge that day was a predetermined thing, so how can the General Counsel complain about it?

The trouble starts with the fact that 5 days later the Company discharged another rental agent—McBride. It takes only one body to make room for one other body. While it is true the decision to bring Hannabas back had been made before that week, there is no evidence of any earlier intent to bring still another girl from the office to the airport counter. The idea that Hale was fired only in anticipation of Hannabas' return therefore rings entirely false.

Next, if the action was actually so fixed in advance of that day, why did the manager take the trouble to go pick Hale up a mile away, bring her for a personal chat with him, only to tell her she was through, just a phrase? This was not a rational thing for the boss to do with a part-timer who had only worked a little over a month. Fannin said he told her she was fired, but when she got back to her post she kept on working. Had he really told her that, she either would have pulled out in a huff immediately upon reaching the airport or, if she needed the money, she would have enjoyed the hours to midnight. Instead, her card shows she left at 9:24. There can be only one coherent explanation for this; something happened between the time she resumed work and the moment she clocked out. But the only thing that happened is that Fannin came to the counter again, at or about 9 o'clock. That Hale clocked out just then because Fannin, for the first time at that moment, told her she was being discharged is an inescapable conclusion. From this it follows Fannin lied about having told the girl in the office that she was being fired. To the question what was he trying to hide by his false testimony—the answer must be his illegal purpose in deciding to let her go after pumping her for all he could get from her about the union activity. I find, as Hale testified, that Fannin interrogated her about her union activities, threatened to discharge her for them, and promised to bribe her in return for her snitching upon her coworkers to keep the Respondent informed of the union activities of all the employees, all these things in violation of Section 8(a)(1) of the Act.

When to this one adds the timing of the dismissal—only 2 days after receipt of the Union's letter saying employees had joined the Union, and the Respondent's ad-

mitted resolution to keep it out of its business, the conclusion that Hale was discharged in violation of Section 8(a)(3) of the Act is clear. I so find.

E. *Discharge of Perdue*

Late in November, 3 months after things had settled down in accordance with the changes of shifts made at the end of August, the Company rearranged the shifts at the airport. For some time there had been two shifts—one from 7 a.m. to 3:30 p.m., and one from 3:30 p.m. to midnight. There were always two girls on each of the shifts, with others working at odd hours. Because of the reduced air traffic beginning at that time of the year, the Company changed to three full shift assignments plus part-timers. One girl continued full time on each of the two older shifts—7:30 a.m. to 12 midnight—and a third shift—called a swing shift, was established, from 11 a.m. to 7:30 p.m. With thus less work, fewer full-timers were required on the shifts. Perdue was discharged. Another agent was reduced to part time. The charge is that Perdue was discharged and Marvel was reduced to part-time work because of their union activities.

Perdue testified that, a few days after her dismissal, she was talking to Fannin, who asked did she know who had sent a certain anonymous letter. It seems someone had sent an unsigned letter on the subject of the Union to World Headquarters of Avis. When she answered she did not know, the manager said he did, because he had studied semantics, and could tell from the handwriting. As they talked he found occasion to say that "he didn't know why we thought we needed a union, that Geoff had been good to us . . . ." Perdue also said that was the only time Fannin mentioned the Union to her.

Are there sufficient facts from which it must be inferred the Respondent's purpose in discharging Perdue, and in reducing Marvel's hours, was to discriminate against them because of their union activity?

It is a fact the Company was opposed to having a union represent its employees. It is a fact its two managers—both Ottaway and Fannin—had several months earlier committed unfair labor practices in questioning employees about union activities and even threatened economic retaliation against them because of it. The Respondent cannot remove these facts from the picture.

It is also a fact that whatever work there was to be done could be done by the staff as reduced by these two changes in payroll in November; this if only because there is no indication anyone has since been hired to replace anybody or that work hours have since then again been enlarged. The Respondent says an added reason for this reduction in force is that it needed more cash, for one reason or another. The General Counsel argues this was not true, that the Company was making a very good profit, and that therefore it could well have afforded to keep everybody on the payroll. But even assuming the Respondent was rich enough to get along with a larger payroll, nothing can black out the fact the larger staff was more than the available work required.

It is also a fact that Perdue had the least seniority of all the rental agents at the airport. It is an old principle of Board law that departure from an established practice of seniority indicates ulterior motive. Here, instead, the General Counsel argues that adherence to seniority (and it is a fact the Respondent followed seniority meticulously not only in the November changes but indeed in each and every change it made in August) proves an intent to hit at the unioneers. Does this mean that when the self-organizational campaign centers among the oldtimers, the employer must select for discharge the new arrivals, but when the newcomers start things going it must immunize them from economic travail? It is a poor argument.

This argument by the General Counsel is stressed here because it is made with respect to each and every detailed item of discrimination alleged to have been committed back in August. The theory is no more convincing as to all of those actions than it is to the discharge of Perdue.

Shortly before this happened, sometime in November, Fannin offered Perdue the newly established job of receptionist in the office. She refused the offer. The asserted animosity against her is said to have come into being 3 months earlier, proved by what Ottaway and Fannin did at that time. If management were really determined to punish Perdue for her prounion activities, the last thing it would do was offer her a more permanent job, just before having to let her go for economic reasons. This disturbing fact is then swept aside by the General Counsel with the purely conclusionary phrase that the Respondent's reason for offering to switch Perdue to the office was to get her out of the unit which the Union was seeking to represent. But this position ignores the equally clear fact that all along the Company's position was that all the Roanoke employees—office and airport—have to be put together. And one thing this record does show clearly is that, in this case, office and airport people must, under Board law, be joined in a single unit.

I find the affirmative evidence insufficient to prove the complaint allegations that Perdue was discharged, or that work hours assigned to Marvel were reduced, for the purpose of curbing their union activities. I shall therefore recommend dismissal of this part of the complaint.

F. *Multiple Violations of Section 8(a)(3)?*

The remaining allegations of violations of Section 8(a)(3)—a third discharge, shifting of employees to less desirable shifts, and further reduction of hours—may be evaluated as a total picture. There is no pinpointed proof that this or that particular discrimination alleged was illegally motivated, there therefore are many aspects that must be considered. As will appear, there are facts pointing to a broadside pattern of union animus, and facts lending ostensible support to at least some of the defense.

That the Respondent was against the idea of any union representing its employees is unquestioned. The most direct evidentiary indication that the Respondent was also disposed to take positive action, even to the point of discharge, to achieve that objective is the conversation both the manager and his assistant had with Hale on August 20. At the hearing, Fannin did not tell the truth about that talk. To me this means Hale is to be believed, and that therefore both Fannin and Ottaway voiced the view that they would discontinue the entire operation

rather than have a union. They even told her her job was "on the line."

A week after Hale was fired—this would be about August 27—she came back for a layoff letter needed for her social worker. She testified that Fannin then asked her "if I had signed a card . . . . He told me that there was someone who had signed a card but they had chickened out and were keeping him informed on everything that was going on."

> Q. Did he ask you to keep in touch with him at all?
>
> A. Right. He asked me if I heard or if I knew of anything would I keep him informed.

Given the character of Fannin's total testimony on this question of interrogation and threats, I do not accept his denials. I credit Hale and find that, by Fannin's questioning whether she had signed the union card, by his statement that the Company knew who the prounion employees were, and by his request that she report to him about the union activities of other employees, the Respondent in each respect violated Section 8(a)(1) of the Act.

Riley Neal, as service agent, testified that after he signed a card, but still in August, Ottaway said to him:

> He just asked me what I meant by joining this damn union . . . . He called me a lying sob . . . . he could have fired me several times before but just didn't do it . . . . He told me if I had thought anything of my job that I had better get that union card back.

Neal's testimony continues that the next morning Fannin said to him:

> . . . did I get that union card back yet. I told him . . . I cannot get it back because it is in the union headquarters in Baltimore . . . . He said, well, we are not going to have this kind of stuff around here. I think the best thing you can do is find yourself another job . . . . I asked him, am I fired? He said, no.

Neal never did suffer discrimination in employment. In the light of the whole record, and especially Ottaway's admission that he did question Neal about his union activities, I credit Neal's testimony and find that both managers unlawfully interrogated him and threatened retaliation, all in violation of Section 8(a)(1).

Charles Moore, another service agent, testified that after the Company received the Union's letter, Ottaway asked him "if I knew anything about it . . . rumors about a union trying to get started." "He just asked me if I hear anything or know anything or know who's behind it, let him know." Ottaway questioned him in a similar fashion again the next day, according to Neal: ". . . he . . . asked me if I had heard anything more or seen anything . . . just to keep my eyes open and ears open and let him know." Again, while admitting the interrogation, Ottaway denied the threats. I credit Moore and find that, by questioning him about the Union and by asking him to report on the union activities of other employees, Ottaway again violated Section 8(a)(1).

Connie Blair worked in the office before all this happened. She said that one day Ottaway told her "there was a slacking in work and he said I could go on part time or I could go to a full time at the counter." She chose to go, and was moved to the airport on August 24. Blair also testified that several times thereafter Ottaway asked had anyone contacted her about the Union, and that she always answered no. Just when these talks came Blair did not remember, except to say that it happened after she had become a countergirl. In one of the talks—just how late in September is not clear—Ottaway asked, "Do you think Wanda [Marvel], Diane [Craft] or Cindy [Perdue], anyone of those are involved and I said yes." Blair added the reason why she said this was "Because of the way they were acting and everything. Their attitude had changed on the counter."

I credit Blair and find, once again, that by Fannin's questioning of her about the union activities, hers as well as that of others, the Company continued its violations of Section 8(a)(1), illegal interrogations.

Long after the August changes of work assignments were made, there came further interrogations and threats. Rental agent Craft said that at or about Christmastime Fannin asked her "why I felt towards the union the way I did, why I had gone to the union." Ottaway added, according to Craft: ". . . you don't know how serious I am about keeping the Union out of this company." Craft also gave testimony about Fannin expressing similar antiunion views on or about March 1, 1980. I credit her testimony also.

To offset the compelling force of the foregoing proof of union animus, the Respondent advances two contentions. One is that the previously decided transfer of Hannabas to the airport necessitated a reduction in staff there, and the other is that business was down and it needed more money, an objective achieved by reducing the number of hours worked weekly by the group as a whole. That the total amount of work available to the old cadre would be reduced by the arrival of Hannabas is a fact of life. The decision to transfer her to the airport clearly antedated the union activity. There is also evidence that, before anyone thought of joining a union, the Company had made definite arrangements to bring a new full-timer to the office to fill whatever void Hannabas' departure might create. Karen Givens is an office worker who had been a part-timer at the office for some months. In late July, with knowledge that Hannabas was leaving, the Company asked her to quit her regular job and come here. On August 9 she wrote to the sheriff's office, where she worked days, giving 2 weeks' notice of her intention to leave. She became a full-timer here on September 4.

Marvel, who initiated the union movement, testified that on or about July 15 both managers spoke to all of the rental agents at a meeting, to tell them Hannabas was going to transfer to the office. According to Marvel, one of the managers said, "No one would lose a job and no one would lose any hours." Fannin, who was present, denied there was any mention of no one losing either job or hours. I must and I do believe him on this point. Marvel's prehearing affidavit varies from her oral testimony.

But more important, she said the reason why she and others first thought of turning to a union was because "We were a little upset about whether we were going to have jobs or not." There is nothing in this record indicating why she should have been worried about her job, except it be the knowledge somebody would have to make way for Hannabas at the airport. Besides, how could the manager have said nobody would be in danger at the very moment he was telling them another employee was joining the same staff?

Marvel was not a very credible witness anyway. Among the charges listed in the complaint is a written warning issued to her on August 21 for punching in late. Did the Respondent really give her that because of her union activity? From Marvel's testimony:

> Q. Were you punching late?
>
> A. Yes, a few minutes sometimes . . . . There were times when the time would slip by and I would miss it and didn't punch in right on time so I would be four or five minutes late punching in.

On her own admission she deserved the warning.

However true it may be that the transfer of Hannabas justified reduction of work hours by the airport group, it absolutely cannot relate to the discharge of McBride on August 24. With Hale discharged on August 20—to make room for Hannabas, according to the Respondent—the staff was already reduced by one. Also on August 24, the Company transferred the other office girl—Connie Blair—to the airport. But there is nothing to show—indeed, it is not even contended—that Blair's transfer was planned before the union activity came to light. Why was she sent to the airport precisely at that critical time? It was to fill this obvious gap in its argument based on the Hannabas transfer that the Respondent made its alternative contention that financial need explains everything it did.

I find that defense unconvincing on this total record. The Company's principal business is renting cars and trucks; monthly financial statements placed in evidence show no significant change in the volume of business done either at the airport or at its office during the month preceding the August events. Ottaway spoke of payments that had to be made to his father, or to certain banks, for his having bought the business early in the year. But those payments were made all along, and never changed materially. But even if capital outlays may have been a burden, the payroll is for current work to be performed, and the relationship between work duties and labor stands apart from personal debt obligations. A more revealing fact is that at the very time this was going on—reducing the staff—as he said—Ottaway was hiring additional employees. No less than three service agents were added on August 20. The very week following the Company hired three more. More significant still is the fact the new men were paid substantially more per hour than the old ones. There is also evidence of raises here and there given the same rental agents not long before the union activities started. And finally, in the middle of all this the Respondent attempted to purchase an additional Avis car rental franchise.

Whatever may be said of an employer's right to keep a close eye on its payroll obligations in times of gas shortages or inflation, as an explanation for the unannounced transfer of Blair to the airport and the concomitant dismissal of McBride the same day, this defense will not do. When to this is added the direct proof of intent to retaliate against the group as a whole, and the perfect timing, the conclusion that the dismissal of McBride was illegally motivated is inescapable. The hours of work for two girls who remained—Marvel and Perdue—were reduced that week. There is no reason for holding that this cutting down on the amount of work performed by others at the airport was not enough to make room for Hannabas. With no doubt at all I find that by discharging McBride the Respondent violated Section 8(a)(3) of the Act.

We come to the selected other four changes made by the Company that week, each pinpointed as a separate unfair labor practice—the transfer of Perdue to the night shift on August 21 and the reduction in her hours on the August 24, the reduction of hours of McBride on August 21, and the transfer of Marvel to the night shift on August 24. As to these minor changes, it is a catchall allegation with little direct, truly related proof. Did management know, during that week in August, when it made the changes in assignment now called illegal, exactly which employees favored the Union, so that it could be said it selected with malice which ones to move around? Despite the interrogations, nobody talked, as one employee witness after another admitted at the hearing. It is a small operation—only about 20 employees all told, and there is a good chance the nosey boss learned things, but it would still have to be an inference that Ottaway acquired the exact information.[2]

The second related fact is that the Respondent moved strictly in accordance with seniority in all the changes it made—every switch in shift assignment and every reduction in hours. No need to belabor it again, for I find without merit the unsupported assertion that it did so expressly to weed out the unioneers. There simply is no evidence to prove that blanket statement. The fact of always picking the least senior employees when some are to lose work supports the affirmative defense of discharge for cause.

Again, a seemingly unrelated complaint allegation will make this point even clearer. Thanksgiving is a slow day at the airport, and only two employees are needed in-

[2] An example of this reasoning by presumption—said to prove company knowledge of the identity of all the card signers—is shown in the testimony of Kim Worley, the rental agent for another car rental agency in the airport. She was offered by the General Counsel to quote something said by June Hannabas, the lady who on the total record then turned out not to be a supervisor. The witness said Hannabas told her she knew who the unioneers were and listed five names. Worley then added Hannabas also told her she knew this because "she had asked Sherry was she involved and had she signed the card and Sherry said what card, and she said she knew by that that Sherry was involved because everyone had to be approached and everyone knew about it." The reasoning here is that, by telling Hannabas she knew nothing about union cards, Sherry admitted she had been solicited and even signed a card. But see *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Los Angeles-Seattle Motor Express]* v. *N.L.R.B.*, 365 U.S. 667 (1961), which says unfair labor practices against unions or employers are not proved by presumption.

stead of the usual group. Somebody had to be picked. Normally, in such a situation, the employees used to discuss the matter among themselves and the Company went along with whatever they wished to do. This time they could not agree, so he called for volunteers; no one offered. So he posted a notice telling everybody the two who were willing to work would get holiday pay plus time and a half. The notice also said that of all who offered to work the most senior ones would be chosen to enjoy the benefit. It also said if no one offered the least senior employees would just be assigned to work by management. Two women—Perdue and Marvel, who also happened to be the least senior of all—signed the notice, each adding after her name that she was doing so "under protest." As it developed one of them worked and the other did not, because some one else took her place.

Was it an unfair labor practice for the Respondent to have proceeded in this manner to choose the two employees it had to have for that 1 day as the complaint alleges? I think not. Some things are better left without comment.

One of the enumerated unfair labor practices is the change of Marvel to the night shift that last week in August. She said Fannin told her, when informing her of the change, she would be given a 10-cent-per-hour raise for the inconvenience. She refused to accept it "unless he contacted my union representative, Mr. LeDane." The manager then asked that she put her request in writing, and she did. Marvel's testimony about this offer ends with her saying that Fannin "laughed," and that she found the raise in her next paycheck "anyway." Ten cents is not much but, given in this manner to so outspoken a prounion employee, it certainly helps negate any suggestion Fannin was using the change of shift to "discriminate" against her because of her feelings. The only theory under which the Respondent could be faulted here is again by inverse reasoning, and it is that when an employer does something seemingly to his credit you infer his purpose was to achieve the opposite of the appearance of things.

Seven months later, in December and around Christmas and later, other things happened, also pointing, according to the General Counsel, to illegality in what the Company had done back in August. While distributing gift hams Ottaway talked with rental agent Craft, and discussed the union situation with her. He asked why had she gone union, argued the contrary view, defended his position, and even said, according to her, he was so opposed to a union he would close the place rather than have it. She, in turn, argued at length the merits of unionism. Ottaway denied saying he would close but admitted telling her he was determined to keep the Union out. Like other incidents and conversations detailed throughout the record, this one too has another side to the coin. A week later the Company offered Craft a job in the office, first saying it would be with a raise of 75 cents, then $1 an hour. Ottaway did tell her then it would mean she could not vote in the election, but when she asked was that why he made the offer, he said no. The offer was made more than once, and when later she finally decided not to accept, Ottaway said he was sorry about that. With the Company always trying to join office and airport employees into a single unit, this may mean the office job, with so much more money, was a supervisory position. I do not know. But it will not do for the prosecution side to argue the generous offer was only to remove Craft from the union group. An employer determined to hurt the unioneers does not offer a better job for so much more money.

All things considered, I find the evidence insufficient to prove that the four changes in assignments made during the week of August 20—transfer of Perdue and Marvel to the night shift and reducing the hours of McBride and Perdue—were motivated by antiunion consideration.

G. *Money Awards*

Entirely apart from what may well have been ordinary rearrangement of individual assignments, the Respondent did retaliate against the employees as a total group in two material, monetary respects, and the record as a whole does support complaint allegations that these were unlawful acts. There are periodic inspection contests among all Avis car rental agencies, with a money prize going to the winning company, or companies. In 1978 this Company won such a contest, and distributed the cash award among the employees. In the summer of 1979 it won a similar contest, and received a $500 check for the success. Ottaway said he received the money in September or October, but this time did not give it to the employees. Ottaway and Fannin told some of the employees about it but denied having received the prize when speaking to others. Asked why the money was withheld this time, Fannin said that "there was no obligation to give it," and Ottaway just said, "We needed the money." Neither explanation will do. To one employee, Neal, who later asked why had the Company withheld the money this time, Ottaway said it was because "he didn't want Wanda [a union activist] to get none of it." That the Company on this occasion abandoned its past practice in consequence of the concomitant union activities is clear to me.

During July, in order to encourage the rental agents to greater effort, Ottaway promised each of them some prize money as a gift if they succeeded in selling double insurance to customers during the month of August. Some of the girls then did "try harder," and even kept records of their successful sales that month. But they never received the money. Why? From Ottaway's testimony: "I was advised by counsel to withhold it until this matter was settled."

I find that by withholding the $500 contest prize money from the employees, and by deliberately holding back the agreed payment for the extra work, asked for and performed in August, the Respondent violated Section 8(a)(3) of the Act. *Hanover House Industries, Inc.*, 233 NLRB 164 (1977).

H. *Moore*

A final allegation of illegal discrimination is that during that week of August 20 the Respondent refused to change service agent Moore from part time to full

time. Moore's testimony about what happened then, and about what the supervisors said to him, is confused, and I do not think it suffices for a positive finding that his request for such change was denied because of his union activities. He did sign a union card on August 17, but there is no proof at all that management knew about it. In fact, although he was asked by Ottaway whether he knew anything about union activities, and again the next day was asked to tell the manager if he heard anything about it, Moore each time denied any participation or knowledge. His testimony is that during that week he asked Ottaway could he move to full time, and that Ottaway answered "he would think about it and let me know." Moore added that he also asked Fannin the same question—apparently the same day—and that "I believed he [Fannin] asked me if I wanted to and I said yes. And he said, okay." With this, the witness continued: "I assumed I was full time at that time. He said, I believe it was Monday or so. I am not sure. He's—so I assumed I was full time. I planned on working till 11:30, I think it was."

Moore's story continues that on that same day, "We started to close up and Geoff asked us if we were ready to go and I told him that Omer had put me on full time and he said, right now things are a little shakey and . . . He said that he would rather keep me part time for a while till this blows over." Moore then added he "guessed" Ottaway was talking about the Union.

On this score Ottaway's testimony is that he refused Moore's request that day and put another service agent, Andrew Blair, on full time because he was more "mature," more experienced, and had been with the Company on and off for 7 years.

Shortly after this—when, I do not know, for again the testimony is very vague as to this entire Moore story—Moore was told by both managers they thought he was a good man and asked would he accept a position as truck rental manager. Nobody bothered to explain what this job then meant, but I assumed it was a promotion of some sort. Now, I do believe Ottaway told Moore it would be better to keep matters as they were until things "blew over," and, surely, that he was in fact referring to the pending union election. But the Company was in a box at that time. Had Ottaway given the man what he wanted, after hearing him say he was not involved with the Union, the complaint could well have added that act as a discriminatory assistance to the antiunion forces. It was only after Moore refused the job of rental truck manager that Ottaway first learned he was a union man. In the interval Moore had asked Marvel, the card solicitor, what should he do, and she told him he would not be able to vote if he accepted the new job. All Ottaway said at that point was "Okay."

The fact that much later, towards the end of November, Moore resigned from the Union, and "three, four weeks" later did go full time, has nothing to do with what happened that week in August. I think this pinpointed complaint item of illegality in not making Moore a full-timer then is but another detail in the catch-all grouping of whatever the Company did that affected the card signers. Whatever touched upon the conditions of those who did not sign cards is ignored; anything that in the least affected the unioneers—and never mind whether the Respondent knew about it or not—is called illegal. I find the probative evidence does not support the allegation Moore was denied full-time work because of his union activity.

I. *Section 8(a)(5)*

As set forth above, the Union would limit the bargaining group to those rental agents who work at the airport plus the service agents. The service agents have their major work station for servicing rented vehicles adjacent to the office a mile away from the airport. Their work also requires that they regularly drive to and from the airport, and even do minor cleaning and refueling there. The first question is whether, as the Company contends, the office girls—there were two at the time of the events—must also be included in the proper unit.

At the office the girls keep the Company's records; they also rent vehicles, exactly as do the airport agents. A difference here is that at the office trucks are rented but at the airport it is always passenger cars. It is true that trucks are different from cars, but as to what work the agents do it is precisely the same thing at both locations. Both groups are subject to common supervision and there is not the least indication of any other difference in their overall conditions of employment. And, as the Board said, Avis rental agents "are in the nature of office clerical employees." *Avis Rent-A-Car System, Inc.*, 132 NLRB 1136 (1961). I find that the office employees here must be joined with the airport rental agents.

As to the service agents, the General Counsel seems to contend that, because the rental agents "regularly have contact" with the service agents, a community of interest must be seen between the two groups. But in fact, the service agents have no less contact with the office girls, who work close to them almost all the time. If there is a difference among all these employees that might justify separating some from the rest, it is between the service agents on one hand and the rest on the other. And the case cited by the General Counsel stands for that very point. *Budget Rent-A-Car of New Orleans, Inc.*, 220 NLRB 1264 (1975).

The Company would also include the rental agents who work at White Sulfur Springs, in West Virginia, 78 miles away. Addition of those two girls completes the full complement of all employees in both categories. They too are supervised from Roanoke; Fannin goes there once a week. They do exactly the same work that is performed at the airport, one of the two girls even servicing rented cars in minor matters. When the White Sulphur Springs girls have problems with their computers, they telephone the Roanoke airport for help and clarification. While it is true there has been virtually no interchange or temporary transfer of employees between the two locations, distance alone is not reason enough to isolate so small a group from the total operation. There is a further contention by the prosecution that helps resolve this detailed question. The General Counsel says that Donna Trevino, one of the White Sulphur Springs girls, is a supervisor, and must therefore be excluded in any event. I am by no means sure the record as a whole

proves she is a supervisor. But be that as it may, the question need not be answered. Assuming Trevino must be excluded, this leaves only one clear rank-and-file employee out of the total of the Company's nonsupervisory employees. The Board long ago held that in such a case you put that employee into the single, companywide unit, and disregard lack of community of interest, if in fact she is different. And the reason for this is that otherwise she would have no way of enjoying the statutory privilege of joining in the collective-bargaining process.

A final question as to the composition of the unit involves the office girl named Givens. She is an office worker who, beginning in April 1979, started to work part time preparing the Company's monthly financial statements. Her hours were not regular, but she came every month and worked as many hours as was necessary to complete her duties. The record shows she worked three successive weeks in May—doing 8.8, 7.8, and 14.9 hours a week. She worked 2 weeks in June, doing 3.8 and 18.8 hours each week. In July she came 2 weeks, doing 5.25 hours and 16.8 hours. Then came the moment of demand and refusal, August 18, according to the General Counsel. Was Givens a regular part-time employee to be included in the count, as the Company contends, to the General Counsel were other General Counsel's contrary assertion? I think yes. There were other part-timers as to whose inclusion there is no dispute. One such, a rental agent at the airport, worked only on Sundays during August 1979, and had worked only that way for a very long time. I see no reason for excluding Givens from the count.

We come to the question of whether or not the Union was authorized by a majority of the employees in the appropriate bargaining unit at the moment of demand and refusal. As best I understand the contention of the General Counsel it is that the critical date was August 19. On August 18 the Company received the bargaining request; its rejection letter was written on August 20. Eight employees signed cards by August 17 or earlier. Although the prosecution brief discourses upon case precedent on the subject of continuing demand—where the employer flouts the request for recognition with no concern about authorization cards at all—it restricts the critical date to August 19. It must do that, because three employees were hired into the unit on August 20—Andrew Blair, Roger Denny, and Kirk Hannabas, and the General Counsel very pointedly insists they may not be considered in the majority count, they came too late.

I find that the Union did not represent a majority in the bargaining unit either on August 19 or August 16, when the demand letter was sent. There were 16 employees properly included in the total count on August 19—12 by stipulation of the parties, plus 3 at the office—Hannabas, Connie Blair, and Givens, plus 1—Debbie Ford—at White Sulphur Springs. Nine authorization cards were placed in evidence. One, signed by King, is not to be counted because he quit work on August 17.

Loretta Hale, the girl who was discharged Monday night, August 20, signed an authorization card; in her own hand it is dated August 20. At the hearing she said she signed it the day before, August 19. Someone drew a line through the number "20," which she wrote on the card, and inserted "18" above it. Marvel, the principal solicitor of cards, testified she received this card from Hale sometime during Sunday, August 19, and that at that moment it bore only the date of August 20. She then added when she took the card to the Union's office the next day LeDane, the union agent, changed the date back to August 18. Perdue testified she saw Hale sign the card on August 19.

In the circumstances of this entire case, and in the light of other evidence, I find this card unreliable evidence to prove Hale authorized the Union to represent her before August 20. Board law says it is the cards which constitute reliable proof of representative status, not the oral testimony of employees as to their quondam state of mind. *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575. If the card can be altered—especially as to the critical date—by the union's agent so as to conform with the employees' later oral testimony as to her intent, the net result is that the testimony takes the place of the document. Why did LeDane write "August 18" if the employee signed on August 19. Three new employees were hired on August 20. It is the position of the General Counsel and of the Union that majority is not to be tested as of August 20, but only as to August 19. This effectively removes those three new arrivals, none of whom signed cards. By pushing back Hale's card, the picture of majority, very close at best, improves. If oral testimony of past intent cannot serve to invalidate a card otherwise valid on its face, it certainly cannot validate one which on its face may not be counted towards majority.

With elimination of Hale's and King's cards, this means that on August 19 the Union was authorized by 7 employees out of the then complement in the bargaining unit of 16. I shall therefore dismiss the complaint allegation of refusal to bargain in violation of Section 8(a)(5).

IV. THE REMEDY

The Respondent must be ordered to offer Loretta Hale and Sherry McBride reinstatement and to make them whole for loss of earnings. It must also be ordered to cease and desist from committing the kind of unfair labor practices it has been carrying on and even stop violating the statute in any other manner.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By discharging Loretta Hale and Sherry McBride the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

2. By the foregoing conduct, by coercively interrogating employees about their union activities, by interrogating employees concerning the union activities of their fellow employees, by offering monetary rewards to its employees as inducement for them to inform the Company about the identity of and the union activities of other prounion employees, by threatening to discharge employees in retaliation for the union activities, by threatening to discontinue its business because of such union activities by its employees, and by creating the impression that it was surveying their union activities, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]